



UNITED STATES ARMY

THE VICE CHIEF OF STAFF

2 August 2005

MEMORANDUM FOR GENERAL OFFICERS

SUBJECT: Gifts To Senior Officials

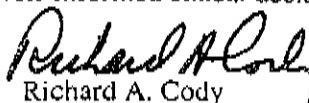
As general officers, you must strictly adhere to the ethics rules that govern the conduct of officers and Soldiers. To do this you must be intimately familiar with the ethics rules, ever mindful that as senior leaders your actions receive increased scrutiny and set the standard for others. Because failure to comply with the Joint Ethics Regulation regarding gifts to senior officials can be inadvertent, you must take special care to avoid common pitfalls: gifts from prohibited sources and gifts from subordinates.

As you and those in your command PCS, pay special attention to gifts from prohibited sources. They are the ones that have the greatest negative impact on our standing with the public. A prohibited source is someone who does business with the Army, seeks to do business with the Army, conducts activities regulated by the Army; or is an organization, a majority of whose members are prohibited sources. A gift given because of your official position is treated as a prohibited source gift, even if the source is not of the type listed above. The general rule is \$20/50 – no more than \$20 an occurrence and \$50 in a calendar year from a prohibited source. The best practice is not to accept gifts from prohibited sources, even if within the permissible limits, because it could call your impartiality into question.

There is an exception for friends; however, the term "friends" is narrowly defined. If this person was a friend before you arrived and will remain a friend after you depart, such a gift is permitted and there aren't any dollar limits. However, no matter how friendly you were while at the installation, if the friendship began after you arrived and the "friend" is a prohibited source; consider the \$20/50 limit to still apply.

You must also be cognizant of gifts from your subordinates. A PCS or retirement gift from a group that includes a subordinate generally may not have a market value of more than \$300. As senior leaders, you must ensure that your subordinates know and understand the gift limitations.

The attached information paper outlines the rules and exceptions concerning gifts. Read it, learn from it, and implement its guidance in your ethics programs. Consult with your Staff Judge Advocate, Ethics Counselor, or Inspector General on any gift issue that may arise. You are all decision makers; ensure that you make well-informed ethical decisions.



Richard A. Cody
General, United States Army

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INFORMATION PAPER

DAJA-SC
27 July 2005

SUBJECT: GIFTS TO SENIOR OFFICIALS

1. **PURPOSE:** To summarize the rules concerning gifts to Senior Officials.

2. Gifts From Outside Sources.

a. Generally, Army and DOD employees may not accept gifts from a "prohibited source" or a gift that is offered because of official position. There are four steps to determining whether a gift may be accepted.

First, is it a "gift?" Items with little intrinsic value intended solely for presentation, benefits available to all military personnel in a particular geographic area, and coffee and donuts offered during a meeting are not considered gifts. Cash or cash equivalent may not be accepted, regardless of amount, unless part of an established awards or scholarship program.

Second, is the gift from a "prohibited source"? A prohibited source is someone who does business with the employee's agency, seeks to do business with the agency, conducts activities regulated by the agency; or is an organization, a majority of whose members are prohibited sources. A gift given because of the recipient's official position is treated as a prohibited source gift, even if the source is not of the type listed above.

Third, if it is a prohibited source/official position gift, does an exception apply? The exceptions are:

1. A gift with a market value of \$20 or less, not to exceed \$50, in a calendar year from any one source.

2. A gift to a group of Federal employees or class of individuals, but not based on official position or rank.

3. Awards for meritorious public service or achievement if pursuant to an established program of recognition (Requires an Ethics Counselor written determination if the gift is cash or has a value in excess of \$200).

4. Social invitations from other than prohibited sources, but based on the employee's official position, if no fee is charged to anyone attending.

5. Gifts based on a personal relationship (must be clearly motivated by family or other personal relationship).

6. Gifts based on outside business or employment relationships (For example, gifts that arise from the spouse's business activities).

7. Free attendance at widely attended gatherings, typically conferences or seminars, when the supervisor determines it to be in the agency interest for the employee to attend.

8. Gifts permitted by other statutes, such as gifts from foreign governments accepted under the authority of 5 U.S.C. 7342 (Retail value in United States may not exceed \$305).

Fourth, if an exception applies, should it be used?

1. Exceptions do not authorize bribes. If a gift buys influence, it is a bribe.

2. A gift may never be solicited or coerced.

3. If the frequency of gifts would lead a reasonable person to believe that the employee is using public office for private gain, they may not be accepted.

b. Disposal of improper gifts. An Ethics Counselor may authorize any one of the following dispositions.

1. The gift may be converted to a gift to the agency, or to an appropriate morale, welfare and recreation activity.

2. If perishable, the gift may be consumed in the office where received.

3. The recipient may keep the gift, and pay the donor its cost.

4. The gift may be returned to the donor.

c. If the value of gifts from a single source is \$305 or more during a calendar year, they must be reported on public financial disclosure form (SF 278).

3. Gifts From Federal Employees

a. Gifts to a transferring or retiring employee from an individual subordinate based a personal relationship is not subject to any value prohibition. However, the gift must be appropriate to the occasion, and must be based on a personal relationship independent of official duties.

b. A gift to a transferring or retiring employee from a group of government employees that includes a subordinate is subject to value limits. The group of government employees will be referred to as a "donating group." The following rules apply:

1. \$300 limit. A retirement gift from a group that includes a subordinate generally may not have a market value of more than \$300. There is one exception. A retirement gift from a group that includes a subordinate may have a market value of more than \$300 if the gift is appropriate for the occasion, and if it is uniquely linked to the transferring or retiring employee's position or tour of duty and commemorates the same.
2. Donating groups. There is no limit on the number of donating groups that may give a retirement gift to a retiring employee. However, the number should be based on common sense and reasonableness. For example, if the gift is for an installation commander and there are several organizations or units located on the installation, it would be appropriate for each of those organizations and units to be a donating group. Also, donating groups may not "pool" their money to buy a gift over the \$300 limit.
3. Contributing to the gifts of more than one donating group. If an employee makes a contribution to the gift with two donating groups, the two donating groups will then be considered to be one donating group, and the total market value of both retirement gifts will have to be \$300 or less. This combining of separate donating groups into one donating group can be avoided if everyone contributes to only one group gift.

c. Soliciting contributions for a group gift. Here are some rules on this subject.

1. Government employees may solicit other government employees for a contribution for a retirement gift.
2. The solicitation may include a suggested dollar amount.
3. If the solicitation includes a suggested dollar amount, the solicitation must include the following language (or words to this effect): "You are free to give less or nothing at all."
4. If the solicitation includes a suggested amount, the suggested amount may not be more than \$10. However, a voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the \$10 limit.
5. The solicitation should state that contributions must be purely voluntary. The

solicitation should not tell people what their "expected" contribution is. It should not contain any language that implies that a contribution is required, expected, or is "the right thing" to do. Also, senior personnel may not pressure subordinates or junior personnel to make contributions.

6. To avoid collecting more than \$300 (or whatever the target amount is), a donating group may adopt a policy of simply returning any contributions made, or declining any contributions offered, once the target amount has been collected.
7. Government employees may not solicit contributions from "prohibited sources" (including DOD contractors *or their employees*).
8. A government employee may contribute more than the suggested dollar amount for a retirement gift. For example, if the contemplated gift costs \$100, and the solicitation yields only \$75, an employee may volunteer to contribute the remaining \$25.

d. Gifts to a retiring installation commander from the employees of a tenant unit. For purposes of gifts to superiors, a "superior" is defined as someone who directs or evaluates the performance of your official duties (or the official duties of any of *your* superiors). Since the installation commander generally does not direct or evaluates the performance of official duties of the employees in a tenant unit, the installation commander is generally not the "superior" of the tenant unit employees. Thus, the \$10 and \$300 restrictions on gifts to a superior from a group that includes a subordinate do not apply. Rather, a gift from tenant unit employees to a retiring installation commander must simply be "appropriate to the occasion."

e. Gifts to the retiring employee from outside the government. Gifts from outside the government would include gifts from government contractors, non-contractor businesses, educational institutions, professional associations, and other community organizations (such as the Chamber of Commerce, veterans organizations, AUSA, etc.) These gifts are governed by the \$20/\$50 rule. Under this rule, an employee may accept gifts of up to \$20 in market value per occasion, so long as the total value of gifts received (under the \$20/\$50 rule) from one source (e.g., one company or organization) does not exceed \$50 in a calendar year. A gift of cash may not be accepted under the \$20/\$50 rule.

f. Gifts to the retiring employee's spouse. The Executive Branch ethics regulation states that if a gift is given to a government employee's spouse simply because he or she is the spouse of the government employee, then the gift is considered to be a gift to the government employee. Thus, if a gift is offered to the spouse of the retiring employee simply because he or she is the spouse of the retiring employee, then the gift is considered to be a gift to the retiring employee, and it may be accepted only in accordance with the rules discussed in this paper. On the other hand, if a gift is offered to the spouse of the retiring employee, and there is an independent basis for the gift, i.e., the spouse has some type of relationship with the person or organization offering

the gift (such as a friendship, or a business or professional relationship), then the gift is not considered to be a gift to the retiring employee, and the spouse may accept the gift.

Brian Howell
Chief, Standards of Conduct Branch
Office of The Judge Advocate General
(703) 588-6707
SOCO@HQDA.ARMY.MIL